

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARCELLO LACRAIG GIBBS,	§
#033465,	§
	§
Plaintiff,	§
v.	§ Civil Action No. 3:17-CV-2351-L-BH
	§
ELMER TANNER; DR. GRADY-SHAW;	§
and LINDA HULLETT,	§
	§
Defendants.	§

ORDER

On April 9, 2020, the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 8) was entered, recommending that the court dismiss this case as frivolous and failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). The magistrate further recommends that dismissal of this case count as a “strike” or “prior occasion” under 28 U.S.C. § 1915(g). No objections to the Report were filed by Plaintiff.*

After reviewing the pleadings, record in this case, and Report, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **dismisses with prejudice** this action as frivolous and failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Further, dismissal of this case **shall** count as a “strike” or “prior occasion” under 28 U.S.C. § 1915(g).

* The docket sheet indicates that all court orders, including the Report, have been mailed to Plaintiff at 300 West 2nd Avenue, Corsicana, Texas, 75110, instead of the return address listed on all of Plaintiff’s filings—312 West 2nd Avenue, Corsicana, Texas, 75110. Although the Report was returned as “undeliverable” (Doc. 9), the docket sheet indicates that Plaintiff previously responded to the Questionnaire sent to him at 300 West 2nd Avenue, and he has not notified the court of any change of address as required by the instructions provided to him on September 5, 2017 (Doc. 2). The court, therefore, determines that Plaintiff was provided with sufficient notice of the Report, such that it is not necessary to have the clerk of the court mail the Report to the 312 West 2nd Avenue address in Corsicana, Texas, before ruling on the recommendation in the Report.

The court prospectively **certifies** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. 24(a)(3). In support of this certification, the court **accepts and incorporates** by reference the Report. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). The court **concludes** that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with clerk of the United States Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; Fed. R. App. 24(a)(5).

It is so ordered this 2nd day of June, 2020.



Sam A. Lindsay
United States District Judge